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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 SUSIE HAYNES,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social Security,

16 Defendant.
17

Case No. EDCV 17-1400 JC

MEMORANDUM OPINION AND
ORDER OF REMAND

18 **I. SUMMARY**

19 On July 12, 2017, plaintiff Susie Haynes filed a Complaint seeking review
20 of the Commissioner of Social Security's denial of plaintiff's applications for
21 benefits. The parties have consented to proceed before the undersigned United
22 States Magistrate Judge.

23 This matter is before the Court on the parties' cross motions for summary
24 judgment, respectively ("Plaintiff's Motion") and ("Defendant's Motion")
25 (collectively "Motions"). The Court has taken the Motions under submission
26 without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; July 13, 2017, Case
27 Management Order ¶ 5.
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1 Based on the record as a whole and the applicable law, the decision of the
2 Commissioner is REVERSED AND REMANDED for further proceedings
3 consistent with this Memorandum Opinion and Order of Remand.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
5 **DECISION**

6 On January 4, 2012, plaintiff filed applications for Supplemental Security
7 Income and Disability Insurance Benefits alleging disability beginning on May 14,
8 2011, due to depression, seizures, joint problems, arthritis, high blood pressure,
9 asthma, heart burn, and ADD. (Administrative Record (“AR”) 16, 189, 191, 211).

10 On July 26, 2013, a prior Administrative Law Judge determined that
11 plaintiff was not disabled from May 14, 2011, through the date of the decision
12 (“Pre-Remand Decision”). (AR 16-30). The Appeals Council denied plaintiff’s
13 application for review of the Pre-Remand Decision. (AR 4).

14 On March 1, 2016, this Court entered judgment reversing and remanding
15 the case due to legal errors in the Pre-Remand Decision. (AR 503-15). On
16 September 15, 2016, the Appeals Council, in turn, remanded the case for further
17 administrative proceedings. (AR 524-25). In its remand Order, the Appeals
18 Council noted that on April 23, 2016, the State Agency had found plaintiff
19 disabled beginning May 1, 2015 (“State Agency Determination”) in connection
20 with new applications for benefits plaintiff had filed on May 29, 2015. (AR 524).
21 The Appeals Council affirmed the favorable State Agency Determination, but
22 remanded the instant case for further administrative proceedings with respect to
23 the period that had not been addressed by the State Agency Determination (*i.e.*,
24 prior to May 1, 2015). (AR 524).

25 On remand the ALJ examined the medical record and on March 2, 2017,
26 heard testimony from plaintiff (who was represented by counsel) and a vocational
27 expert. (AR 441-85).

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1 On April 26, 2017, the ALJ determined that plaintiff was not disabled for
2 the closed period from May 14, 2011 (plaintiff's alleged onset date) through April
3 30, 2015 (the last day of the "closed period" the ALJ had considered per the
4 Appeals Council's remand order) ("Post-Remand Decision"). (AR 419-33).
5 Specifically, the ALJ found that during the closed period: (1) plaintiff suffered
6 from the following severe impairments: arthritis with degenerative joint disease in
7 the knees and possible degenerative joint disease in the ankles, hypertension,
8 asthma, left carpal tunnel syndrome, obstructive sleep apnea, right trigger thumb,
9 obesity, cognitive disorder, learning disorder, mood disorder, depression, and
10 history of attention deficit hyperactivity disorder (AR 422); (2) plaintiff's
11 impairments, considered individually or in combination, did not meet or medically
12 equal a listed impairment (AR 422-24); (3) plaintiff retained the residual
13 functional capacity to perform work at less than the light level of exertion
14 (20 C.F.R. §§ 404.1567(b), 416.967(b)) with additional limitations¹ (AR 424);
15 (4) plaintiff had no past relevant work (AR 431); (5) there are jobs that exist in
16 significant numbers in the national economy that plaintiff could perform (AR
17 432); and (6) plaintiff's statements regarding the intensity, persistence, and
18 limiting effects of subjective symptoms were not entirely consistent with the
19 medical evidence and other evidence in the record (AR 425).

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23 ¹The ALJ determined that plaintiff could (i) stand and/or walk for four hours during an
24 eight-hour workday; (ii) occasionally climb ramps and stairs, but could never climb ladders,
25 ropes, or scaffolds; (iii) occasionally balance, stoop, kneel, crouch, and crawl; (iv) not engage in
26 repetitive use of the left non-dominant hand; (v) not have concentrated exposure to fumes, odors,
27 dusts, gases, or poor ventilation; (vi) not work around unprotected heavy machinery or
28 unprotected heights; (vii) understand, remember, and carry out simple job instructions, but
nothing above Level 2 reasoning; (viii) not perform work that would require directing others, or
involve abstract thought or planning; (ix) not do fast paced production work; and (x) tolerate only
occasional changes in work setting. (AR 424).

III. APPLICABLE LEGAL STANDARDS

A. Administrative Evaluation of Disability Claims

To qualify for disability benefits, a claimant must show that she is unable “to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012) (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted). To be considered disabled, a claimant must have an impairment of such severity that she is incapable of performing work the claimant previously performed (“past relevant work”) as well as any other “work which exists in the national economy.” Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)).

To assess whether a claimant is disabled, an ALJ is required to use the five-step sequential evaluation process set forth in Social Security regulations. See Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th Cir. 2006) (citations omitted) (describing five-step sequential evaluation process) (citing 20 C.F.R. §§ 404.1520, 416.920). The claimant has the burden of proof at steps one through four – *i.e.*, determination of whether the claimant was engaging in substantial gainful activity (step 1), has a sufficiently severe impairment (step 2), has an impairment or combination of impairments that meets or equals a listing in 20 C.F.R. Part 404, Subpart P, Appendix 1 (step 3), and retains the residual functional capacity to perform past relevant work (step 4). Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citation omitted). The Commissioner has the burden of proof at step five – *i.e.*, establishing that the claimant could perform other work in the national economy. Id.

B. Federal Court Review of Social Security Disability Decisions

A federal court may set aside a denial of benefits only when the Commissioner’s “final decision” was “based on legal error or not supported by

1 substantial evidence in the record.” 42 U.S.C. § 405(g); Trevizo v. Berryhill, 871
2 F.3d 664, 674 (9th Cir. 2017) (citation and quotation marks omitted). The
3 standard of review in disability cases is “highly deferential.” Rounds v.
4 Commissioner of Social Security Administration, 807 F.3d 996, 1002 (9th Cir.
5 2015) (citation and quotation marks omitted). Thus, an ALJ’s decision must be
6 upheld if the evidence could reasonably support either affirming or reversing the
7 decision. Trevizo, 871 F.3d at 674-75 (citations omitted). Even when an ALJ’s
8 decision contains error, it must be affirmed if the error was harmless. Treichler v.
9 Commissioner of Social Security Administration, 775 F.3d 1090, 1099 (9th Cir.
10 2014) (citation omitted).

11 Substantial evidence is “such relevant evidence as a reasonable mind might
12 accept as adequate to support a conclusion.” Trevizo, 871 F.3d at 674 (citation
13 and quotation marks omitted). It is “more than a mere scintilla, but less than a
14 preponderance.” Id. When determining whether substantial evidence supports an
15 ALJ’s finding, a court “must consider the entire record as a whole, weighing both
16 the evidence that supports and the evidence that detracts from the Commissioner’s
17 conclusion[.]” Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014) (citation
18 and quotation marks omitted).

19 Federal courts review only the reasoning the ALJ provided, and may not
20 affirm the ALJ’s decision “on a ground upon which [the ALJ] did not rely.”
21 Trevizo, 871 F.3d at 675 (citations omitted). Hence, while an ALJ’s decision need
22 not be drafted with “ideal clarity,” it must, at a minimum, set forth the ALJ’s
23 reasoning “in a way that allows for meaningful review.” Brown-Hunter v. Colvin,
24 806 F.3d 487, 492 (9th Cir. 2015) (citing Treichler, 775 F.3d at 1099); see
25 generally 42 U.S.C. § 405(b)(1) (“ALJ’s unfavorable decision must, among other
26 things, “set[] forth a discussion of the evidence” and state “the reason or reasons
27 upon which it is based”); 20 C.F.R. § 404.953(a) (“The administrative law judge
28 shall issue a written decision that gives the findings of fact and the reasons for the

1 decision.”); Securities and Exchange Commission v. Chenery Corp., 332 U.S. 194,
2 196-97 (1947) (administrative agency’s determination must be set forth with
3 clarity and specificity).

4 A reviewing court may not conclude that an error was harmless based on
5 independent findings gleaned from the administrative record. Brown-Hunter, 806
6 F.3d at 492 (citations omitted). When a reviewing court cannot confidently
7 conclude that an error was harmless, a remand for additional investigation or
8 explanation is generally appropriate. See Marsh v. Colvin, 792 F.3d 1170, 1173
9 (9th Cir. 2015) (citations omitted).

10 **IV. DISCUSSION**

11 Plaintiff argues that the Post-Remand Decision does not adequately explain
12 why the ALJ found plaintiff not disabled through the last day of the closed period
13 (April 30, 2015) when the state agency had granted plaintiff disability benefits
14 starting just one day later (May 1, 2015). (Plaintiff’s Motion at 11-14). The Court
15 agrees that a remand for further administrative proceedings is appropriate.

16 In short, there is a reasonable possibility that the state agency’s decision to
17 grant plaintiff benefits effective May 1, 2015, was based on significant probative
18 evidence that the ALJ here had not considered before finding plaintiff not disabled
19 just a day earlier. For example, while the Post-Remand Decision reflects that the
20 ALJ was clearly aware of the State Agency Determination, it does not adequately
21 explain why the ALJ and the state agency reached entirely different decisions
22 regarding plaintiff’s alleged disability just one day apart. The Post-Remand
23 Decision appears to suggest that plaintiff’s condition may have become disabling
24 on May 1, 2015, essentially because “on May 1, 2015, abnormal gait with
25 additional complaints were documented [for plaintiff], consistent with
26 decompensation.” (AR 428) (citing Exhibit 19F at 52 [AR 788]). The treatment
27 note the ALJ references, however, also suggests that plaintiff’s condition may
28 have deteriorated at some point prior to May 1, 2015 – *i.e.*, during the closed

1 period at issue here). (AR 788 [May 1, 2015, treatment note that plaintiff had
2 “pain [in] right upper outer thigh due to abnormal gait” and that “the right hip
3 started getting worse [sic] *last few weeks*”]) (emphasis added).

4 In addition, the Post-Remand Decision does not address multiple other
5 treatment notes in the instant Administrative Record – several of which also
6 appear to document treatment of plaintiff *during* the closed period. (Compare AR
7 425 [Post-Remand Decision noting “[ALJ] has reviewed and considered the
8 complete medical history . . . including evidence from the period prior to the
9 [plaintiff’s] alleged onset date (Exhibits 1F-14F)”] and AR 425-30 [Post-Remand
10 Decision citing portions of only Exhibits 1F-3F, 5F, 7F-14F, 19F, 20F, 22F], with
11 AR 370-737, 872-78, 920-74 [Exhibits 15F-18F, 21F, 23F-26F]); cf., e.g.,
12 Garrison, 759 F.3d at 1012-13 (“[A]n ALJ errs when he rejects a medical opinion
13 or assigns it little weight while doing nothing more than ignoring it, asserting
14 without explanation that another medical opinion is more persuasive, or criticizing
15 it with boilerplate language that fails to offer a substantive basis for his
16 conclusion.”); Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (ALJ
17 must provide explanation when rejecting “significant probative evidence”)
18 (citation omitted).

19 Moreover, defendant points to nothing in the instant record which readily
20 reconciles the seeming inconsistency between the Post-Remand Decision and the
21 State Agency Determination. For example, defendant asserts that “[i]t is clear
22 from the Appeals Council’s order that the favorable [State Agency Determination]
23 was supported by substantial evidence from that later period” (Defendant’s
24 Motion at 4). The Appeals Council’s order, however, simply states in a
25 conclusory manner that the State Agency Determination was “supported by the
26 substantial evidence of record” (AR 524), which does not explain how the
27 Commissioner’s seemingly contradictory determinations might be reconciled.

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1 Accordingly, a remand is required so that the Commissioner may evaluate
2 whether the non-disability determination reached in the Post-Remand Decision is
3 supported by substantial evidence. See Luna v. Astrue, 623 F.3d 1032, 1035 (9th
4 Cir. 2010) (remand for “further consideration of the factual issues is appropriate to
5 determine whether the outcome of [ALJ’s denial of application for disability
6 benefits] should be different” where there is “‘reasonable possibility’ that
7 subsequent grant of benefits was based on new evidence not considered by []
8 ALJ.”) (citing Booz v. Secretary of Health and Human Services, 734 F.2d 1378,
9 1380-81 (9th Cir. 1984)); Walters v. Colvin, 213 F. Supp. 3d 1223, 1229 (N.D.
10 Cal. 2016) (same) (citing id.).

11 **V. CONCLUSION**

12 For the foregoing reasons, the decision of the Commissioner of Social
13 Security is REVERSED in part, and this matter is REMANDED for further
14 administrative action consistent with this Opinion.²

15 LET JUDGMENT BE ENTERED ACCORDINGLY.

16 DATED: May 31, 2018

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/s/

18 Honorable Jacqueline Chooljian
19 UNITED STATES MAGISTRATE JUDGE
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24 ²The Court has not adjudicated and need not adjudicate plaintiff’s other challenges to the
25 Post-Remand Decision, except insofar as to determine that a reversal and remand for immediate
26 payment of benefits would not be appropriate. See generally Dominguez v. Colvin, 808 F.3d
27 403, 407 (9th Cir. 2016) (When an ALJ’s decision is reversed “the proper course, except in rare
28 circumstances, is to remand to the [Commissioner] for additional investigation or explanation.”)
(citations and internal quotation marks omitted); see also Treichler, 775 F.3d at 1099 (“The
ordinary remand rule applies equally to Social Security cases.”) (citations omitted).